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Dame Ellis Aylmer, - - - - - Appellant.

Robert Reed, Robert Dillon, Esq; John Donnellan,  
Jeffry Browne, Robert French, and Sir Andrew } Respondents.  
Aylmer, - - - - - }

## The CASE of the Respondent ROBERT REED.

Stat. 2. Q. Anne,  
to prevent the  
Growth of Po-  
pery.

**B**Y an Act of Parliament made in Ireland in the second Year of her late Majesty Queen Anne, intituled, *An Act to prevent the further Growth of Popery*, it is, amongst other things, Enacted, "That every Papist or Person professing the Popish Religion, shall, from and after the 24th Day of March 1703, be disabled, and is hereby made incapable to buy and purchase either in his or their own Name, or in the Name of any other Person or Persons, to his or her Use, or in Trust for him or her, any Manors, Lands, Tenements, or Hereditaments, or any Rents or Profits out of the same, or any Leases or Terms thereof, other than any Term of Years not exceeding 31 Years, whereon a Rent not less than two Thirds of the improved yearly Value at the time of the making such Lease of the Tenements leased, shall be reserved and made payable during such Term; and that all and singular Estates, Terms, or any other Interests or Profits whatsoever, other than such Leases, not exceeding 31 Years as aforesaid, of, in, or out of such Lands, Tenements or Hereditaments, from and after the said 24th Day of March, to be bought and purchased by or for the Use or Behoof of any such Papist, or Person or Persons professing the Popish Religion, or upon any Trust or Confidence, mediately or immediately, to or for the Benefit, Use or Advantage of any such Person or Persons professing the Popish Religion, shall be utterly void, and of none Effect, to all Intents, Constructions and Purposes whatsoever."

Stat. 8. Anne,  
to explain the  
preceding Act.

By another Act made in Ireland in the 8th Year of the late Queen Anne, intituled, *An Act for explaining and amending an Act, intituled, An Act to prevent the further Growth of Popery*, it is, amongst other things, Enacted, "That whereas the said Act to prevent the further Growth of Popery, and several other Acts, have been most notoriously eluded by several Papists, and others in Trust for them, who have purchased several Lands, Tenements and Hereditaments, and taken Leases, contrary to the true Intent and Meaning of the said Act; and have also taken collateral and other Securities, by Mortgages, Judgments and Statutes, to cover, support and secure such their Purchases and Leases: For Remedy whereof, and for the better enforcing the Execution of the said Acts, it is further Enacted, That all collateral and other Securities by Mortgages, Judgments, Statutes Merchant, or of the Staple, or otherwise howsoever, which have been made or entered into, or hereafter shall be made or entered into, to cover, support, secure or make good any Bargain, Sale, Confirmation, Release, Feoffment, Lease, or other Conveyance, contrary to the said recited Act, shall be, and hereby are declared null and void, and of no Effect, to such Person or Persons so purchasing any of the said Lands or Tenements in Trust for, or for the Benefit of any Papist or Person professing the Popish Religion, as likewise to any such Papist or Person, his, her, or their Heirs and Assigns respectively; and that all such Lands, Tenements and Hereditaments, so conveyed or leased, or to be conveyed or leased to any Papist or Person professing the Popish Religion, or to the Use of, or in Trust for any Papist or Person professing the Popish Religion, contrary to the true Intent and Meaning of the said Acts; and all such collateral Securities as are or shall be made or entered into, to cover, support, secure, or make good the same, shall and may be sued for by any Protestant or Protestants, by his, or her, or their proper Action, real, personal, or mixed, founded on this Act, in any of her Majesty's Courts of Law, or in any Court of Equity, if the Nature of the Case shall require it; and the Plaintiff or Demandant in such Suit, upon Proof that such Purchase or Lease was made in Trust for any Papist or Person professing the Popish Religion, or under any Confidence to or for any Papist, or such Person professing the Popish Religion, or for his, her, or their Benefit or Advantage, by receiving the Rents, Issues or Profits thereof, or otherwise, shall obtain a Verdict and Judgment, or a Decree thereupon, and shall recover the same, and have Execution to be put into the Seizin and Possession thereof, to hold and enjoy such Lands, Tenements and Hereditaments, according to the Estate, Use, Trust, Interest or Confidence which such Papist or Person professing the Popish Religion had, or should have had therein, had he, she or they been qualified to purchase, hold or enjoy the same, subject nevertheless to all such Rents, Covenants and Conditions, Reservations, and all Incumbrances and Portions whatsoever, as the same would have been subject to in the Hands of such Papist, or in the Hands of such Person to whom the same were sold or leased in Trust for such Papist, or Person professing the Popish Religion, or to his, her, or their Use, Benefit or Behoof; and shall also have the full Benefit of all such collateral Securities, as the Party or Parties to whom the same are or shall be made, might have had, if this or the said former Act, to prevent the further Growth of Popery, had not been made."

Anno 1714.  
Treaty of Marriage between the  
Appellant and  
Luke Dillon, Esq;

In March 1714, the Appellant Dame Ellis Aylmer, who was the Widow of Sir Justin Aylmer, Bart. deceased, and afterwards of Captain Philip Roch, the said Roch, her second Husband, being then dead, having entered into a Treaty of Marriage with Luke Dillon, late of Clonbrook in the County of Galway, Esq; deceased, such Marriage was finally agreed upon; and the Appellant Dame Ellis Aylmer being possessed of 2000 l. South Sea Stock, which had been devised or left to her by her said second Husband Captain Philip Roch, besides Plate and Jewels; and the said Luke Dillon being seized of an Estate of Inheritance in the Kingdom of Ireland, of the yearly Value of 1000 l. and upwards.

7 March 1714.  
Articles previous  
to the Appel-  
lant's Marriage  
with Luke  
Dillon, Esq;

By Articles of Agreement of this Date, previous to the said Marriage, and made between the said Luke Dillon of the first Part, the Appellant by the Name and Addition of Dame Ellis Aylmer Roch, of Finglass, in the County of Dublin, Widow, of the second Part, and Mac Laughlin Donnellan, of Ballydonnellan, in the County of Galway, Esq; of the third Part, reciting the said intended Marriage; and also reciting, that it had been agreed upon, that all the Plate, Jewels, and 2000 l. South Sea Stock, left the Appellant by Captain Philip Roch, her second Husband, deceased, should be made over, so as that the sole Trust and Dominion thereof might continue in the said Dame Ellis Aylmer, notwithstanding her Intermarriage with the said Luke Dillon; and that she might dispose of the same by any Deed or Writing, or by Will, to be by her executed solely and without her Husband, in the Presence of three credible Witnesses. It was witnessed, That the said Dame Ellis Aylmer Roch, in Consideration of the said Marriage, and for the Ends and Purposes aforesaid, by and with the Consent and Agreement of the said Luke Dillon, testified by his being a Party thereto, did transfer and assign all and singular the Plate and Jewels left her by the said Philip Roch, deceased, her late Husband, and also the said 2000 l. South Sea Stock; to hold the said Plate,

Jewels,



Jewels, and 2000 *l.* *South Sea* Stock, to him the said *Laughlin Donnellan*, his Executors and Administrators, in Trust for the said Dame *Ellis Aylmer*, but so as the said *Luke Dillon*, after their Intermarriage, should have no Power to dispose in any kind or respect, of all or any Part thereof; but that the said Dame *Ellis Aylmer* should have the sole and absolute Disposal of the same, at any time she should think proper during the said Coverture, or being sole, by any Deed in Writing sign'd by her when sole, or during her Coverture, and without her Husband, and sealed in the Presence of three Witnesses, as the said Dame *Ellis* should think proper; and the Interest of the said 2000 *l.* was likewise to be at the free and separate Disposal of the said Dame *Ellis Aylmer*, with a Covenant from the said *Luke Dillon* to the said *Laughlin Donnellan*, to charge or raise out of his Real Estate in that Kingdom by Mortgage, Rent-Charge or otherwise, 3000 *l.* Sterling for Portions for the Issue of the said Marriage, if there should be three or more Children; 1500 *l.* only, if but two; and 1000 *l.* in case of one Child only.

15 March 1714.  
Articles of Agree-  
ment pretended  
to be subsequent  
to the Appellant's  
Marriage with  
*Luke Dillon*, Esq;

By other Articles of Agreement of this Date, (pretended to be truly dated, and to be subsequent to the Marriage) made between the same Parties as the former Articles previous to the Marriage, and duly executed by them all three, the said *Mac Laughlin Donnellan* did agree, and by and with the Advice and Consent of the said Dame *Ellis*, manifested by her perfecting the said Articles, did assign, transfer and make over the said 2000 *l.* *South Sea* Stock unto the said *Luke Dillon*, to the end the same should pay off and discharge the Debts then affecting or incumbering the said *Luke Dillon*'s Estate.

And the said *Luke Dillon* did, by the said Articles of the 15th of *March* 1714, for himself, his Heirs, Executors, Administrators and Assigns, and for and in Consideration thereof, covenant, promise, and grant to and with the said *Mac Donnellan*, his Executors, Administrators and Assigns, to, for, and in behalf of the said Dame *Ellis Aylmer*, that he the said *Luke Dillon* should and would, by way of Mortgage, Rent-Charge, or otherwise, charge and incumber his Real Estate in that Kingdom with the Sum of 200 *l.* *per Ann.* the same to continue till the said Sum of 2000 *l.* should be respectively paid, without any Interest for the same; with Power, on Default of Payment, to distrain for the same.

But the Appellant, and her said Trustees, being both professed *Papists*, and, as such, incapable by Law to take or have the Benefit of any Security upon a Real Estate, by way of Mortgage, Rent-Charge, or otherwise; they, with the said *Luke Dillon*, likewise a *Papist*, contrived the following Method to elude the Acts against Popery. And, for that Purpose,

8 October 1715.  
Statute Staple  
for 4000 *l.* en-  
ter'd into by  
*Luke Dillon*, Esq;  
as a collateral Se-  
curity for Pay-  
ment of the  
200 *l.* a Year  
Rent-Charge.  
Same 8 Octob.

The said *Luke Dillon*, at the Request of the Appellant, and her said Trustee *Mr. Donnellan*, entered into, and executed a Bond or Statute of the Staple for 4000 *l.* before the Mayor and Constables of the Staple of *Galway*, unto the said *Mac Laughlin Donnellan*; and which was so enter'd into, as the Respondent insists, as a collateral Security for Performance of the said Articles of Agreement of the 25th of *March* 1714, and for making good the said Mortgage, or Rent-Charge of 200 *l.* *per Ann.* till the said 2000 *l.* should be paid to the said Dame *Ellis Aylmer*, or her said Trustee, for her separate Use as aforesaid. And,

1715.  
Defeazance of the  
said Statute  
Staple.

By Indenture of this Date, made between the said *Mac Laughlin Donnellan* of the first Part, the said *Luke Dillon* of the second Part, and the Appellant of the third Part, reciting the said Articles of Agreement of the 7th of *March* 1714, and likewise the said other Articles of Agreement of the 15th of *March* 1714; and also reciting, that the said *Luke Dillon* had received the said 2000 *l.* from the said *Mac Laughlin Donnellan*, pursuant to the said last-mentioned Articles; and that the said *Luke Dillon* being willing and desirous to secure the Payment thereof in such manner as was by the said Articles appointed and had pursuant thereto, and at the Request of the said *Mac Laughlin Donnellan* and Dame *Ellis*, and by Advice and Approbation of their Council, enter'd into or executed one Bond or Statute Staple for 4000 *l.* unto the said *Mac Laughlin Donnellan*, bearing even Date therewith: It was witnessed, that the said *Mac Laughlin Donnellan* did, by and with the Consent, Direction and Approbation of the said Dame *Ellis*, signified by her being a Party thereto, for him, his Executors, Administrators and Assigns, covenant, promise, and grant to and with the said *Luke Dillon*, his Executors, Administrators and Assigns, in manner following; viz. That in case the said *Donnellan* should be paid the full Sum of 200 *l.* yearly for and until such time as the said 2000 *l.* should be fully paid, according to the true Intent and Meaning of the said Agreement, that then the said *Donnellan* should not extend or sue out Execution upon the said Statute or Bond of the Staple; but that upon the said 2000 *l.* being fully paid in manner aforesaid, the same should be released and made void, and Satisfaction acknowledged for the same: But in case there should be any Default or Neglect made in the Payment of the said 200 *l.* *per Ann.* in manner aforesaid, that in such Case, and from thenceforth, the said *Donnellan* was to be at Liberty to proceed upon the said Statute or Bond of the Staple as was usual, and sue out Execution thereon; and might recover and receive Interest for so much of the said 2000 *l.* as should be behind and unpaid at the Time of such Default or Neglect of Payment, at the Rate of 7 *l.* *per Cent.* *per Ann.* It being thereby declared to be the Intent and Meaning of the Parties, that in case the said *Luke Dillon*, his Heirs, Executors, Administrators or Assigns, should pay the said 2000 *l.* by 200 *l.* *per Ann.* until the said 2000 *l.* was paid, without Interest, that he and they should have their Election so to do, and in such Case were not to be chargeable farther upon account of the said Statute Staple; but in case the said 200 *l.* was not paid in manner aforesaid, that then, and from the Time of such Failure in Payment, the said 2000 *l.* or so much thereof as should be then due, should carry Interest, at the Rate of 7 *l.* *per Cent.* *per Ann.* And it was thereby further agreed between the Parties, that the Securities of all such Debts and Incumbrances of the said *Luke Dillon*'s, as should be paid and discharged by the said 2000 *l.* should be assigned and made over to such Person or Persons as the said *Donnellan* should appoint and direct; such Assignment to be made for the further and better securing the said 2000 *l.* in manner aforesaid: And that upon Payment of the said 2000 *l.* the said Securities should be assigned to such Person and Persons as the said *Luke Dillon*, his Heirs, Executors, Administrators and Assigns, should appoint.

Notwithstanding this collateral Security for the said Rent-Charge of 200 *l.* *per Ann.* for the Appellant's Benefit, by Statute Staple and Defeazance, as aforesaid, no Payment was ever made by the said *Luke Dillon* in his Life-time, nor was he ever called upon for the same; nor was there ever any Assignment made of any Debt or Incumbrance affecting the said *Luke Dillon*'s Estate, made over to or for the Use of the Appellant, or her said Trustee *Donnellan*; nor, in fact, was the said 2000 *l.* so received by the said *Luke Dillon* as aforesaid, applied, or intended to be applied by him for any such Purpose; he or his Estate not being any way encumbered with Debts, nor having any Demands upon them to any thing near that Amount. From whence, and the other Circumstances of the Case, it appears that the Statute Staple and Defeazance were only devised and intended to evade and elude the said Popery Acts, and to be a collateral Security for Performance of the said Articles.

13 March 1716.

The said *Luke Dillon* died, seized of a Real Estate of upwards of 1000 *l.* *per Ann.* leaving the Respondent, *Robert Dillon*, Esq; his Eldest Son, and Heir by a former Wife, and no Issue by the Appellant; and in about two Years after his Decease, the Appellant recovered Dower, as Widow of the said *Luke Dillon*, to the Amount of between 3 and 400 *l.* *per Ann.* out of the Real Estate, whereof the said *Luke Dillon* died seized; and was proceeding to extend the said Statute Staple on the rest of her said Husband's Real Estate.

26 Jan. 1732.  
Respondent  
Reed's Bill.

The Respondent, *Robert Reed*, exhibited his Bill in the High Court of Chancery in *Ireland*, as a Protestant Discoverer, grounded on the said Popery Acts, against the Appellant Dame *Ellis Aylmer*, the Respondent *Robert Dillon*; and also against *Jeffry Browne*, the surviving Executor, named in the last Will and Testament of the said *Luke Dillon*, and *John Donnellan*, and *Robert French*, Executors of *James Donnellan*, who was Administrator and residuary Legatee of the said *Laughlin Donnellan*; and also against Sir *Andrew Aylmer*, who was Administrator *de bonis non*, of the said *Laughlin Donnellan*, setting forth the several Articles, Deeds and Facts, herein before-mentioned; and that the Appellant was, and always had been, a *Papist*: As was also the said *Mac Laughlin Donnellan*, all his Life-time; and



and consequently incapable to take the Security of the said 2000 *l.* by way of Mortgage, or Rent-Charge, or otherwise, so as to be a Charge on the Real Estate, or the said Statute Staple for collateral Security to make good the same: And that the Plaintiff, as a Protestant Discoverer, was intitled to the said 2000 *l.* and likewise to the Benefit of the said Mortgage or Rent-Charge, and to the said Statute Staple, enter'd into as a collateral Security as aforesaid, by virtue of the said Acts of Parliament; and praying Relief accordingly.

The Appellant  
Aylmer's Answer to the Respondent Reed's Bill.

To this Bill the Appellant Dame *Ellis Aylmer* put in three several Answers, and thereby admitted the several Securities herein before stated and mentioned; and said, That she was prevailed upon by the said *Luke Dillon* to come into the said Articles of the 15th of *March* 1714. and that the same were drawn and prepared by the said *Luke Dillon* and his Council; but denied that the said *Luke Dillon* did at any time execute any Deed of Mortgage or Rent-Charge to her, or any other in Trust for her, of any Part of his real Estate, for securing the Re-payment of the said 2000 *l.* or the 200 *l. per Ann.* or any other Sum; and also denied, that when she consented that the said 2000 *l.* should be assigned to the said *Luke Dillon*, to be applied in Discharge of the Debts then affecting his Estate, she made any Agreement whatsoever to take any Mortgage or Rent-Charge for securing the Re-payment thereof, (tho' she herself was a Party to, and executed the said Articles of the 15th of *March* 1714. whereby the said *Luke* covenanted to make such Mortgage or Rent-Charge) or that any Security should be given for the same contrary to the said Popery Acts, or in any Sort to elude the same; but that her Agreement was, that such Security should be given as would make her safe, and such as she was capable of taking, without Breach of any Law whatsoever; and that the said 2000 *l.* was by her lent and advanced to the said *Luke*, to retrieve him from very great Difficulties which he then lay under from his Creditors; and that she, in Consideration of his then Circumstances, consented to take the same by Instalments of 200 *l.* a Year, without Interest, which she understood was to be secured by Judgment or Statute Staple (tho' she was not afterwards able to prove, thro'out the whole Progress of the Cause, that the said *Luke Dillon* was anyways indebted or involved in his Circumstances at that or any other time, as she would have it imagined); and denied that the said Statute Staple was entered into, to the said *Donnellan*, as a collateral Security to make good any Mortgage or Rent-Charge charged upon or issuing out of any Lands or real Estate of the said *Luke Dillon*, for securing the Payment of 200 *l. per Ann.* but that the same was an original Security for the said 2000 *l.* payable by 200 *l. per Ann.* and was so intended; and that if by any general Words mentioned in the Agreement for lending said 2000 *l.* to said *Luke Dillon*, it appears that any Mortgage or Rent-Charge was to be made or granted for securing the Repayment of said 2000 *l.* the same was done without any Agreement or Direction of her for that or any such Purpose; and must have happened, as she believed, through the Mistake of the Person employed by the said *Luke Dillon* to draw the said Articles, and without any Intention to elude the said Acts of Parliament; and said, that neither she or the said *Mac Laughlin Donnellan* in his Life-time, to her Knowledge or Belief, had ever received any Part of the said 2000 *l.* or any Interest for the same, nor did she know that the said *Luke Dillon* had applied the said 2000 *l.* he received in Payment of any Debts affecting his Estate; and if he did, that he did not at any time whatsoever, to her Knowledge or Belief, assign or procure any Assignment to be made thereof to the said *Donnellan* for her Use, or in Trust for her; and also admitted that she had recovered her Dower or Thirds out of the said *Luke Dillon's* real Estate, and was proceeding to recover the said 2000 *l.* and Interest upon the said Statute Staple; and also admitted, that the said *Mac Laughlin Donnellan* died a Papist, and that she herself was and always had been a Person professing the Popish Religion, and by Law incapable to take any Security upon a real Estate by way of Mortgage or Rent-Charge; but insisted, tho' a Papist, she was not by any Law disqualified from recovering the said 2000 *l.* and Interest under the said Statute Staple.

The Respondent  
Robert Dillon's Answer to the Plaintiff Reed's Bill.

The Respondent *Robert Dillon* also put in his Answer to this Bill, and thereby insisted on the said *Luke Dillon's* dying a Papist, and that he being the said *Luke's* eldest Son and Heir, and having after his Father's Death conformed to the Protestant Religion, and the Estate of the said *Luke* being in his Hands, and the said Articles of the 15th of *March* 1714. not being inrolled, or the Statute or Defeazance thereon, he or his Estate was in no sort liable to the Payment thereof; and insisted that a Protestant Discoverer could be in no better Condition than the said Dame *Ellis* would be.

Answers of the  
other Respondents to Reed's Bill.

The other Respondents likewise put in their Answers to the said Bill, and admitted the several Representations to be as aforesaid.

The Cause being afterwards at Issue, several Witnesses were examined on the Behalf of the Respondent *Reed*, the Plaintiff, who fully proved, that the said *Reed* was a Protestant; and that the Appellant, as also the said *Luke Dillon* her Husband, and the said *Mac Laughlin Donnellan*, were Papists; and who likewise proved the due Execution of the several Securities herein before mentioned by the several Parties thereto, and that the real Estate of the said *Luke Dillon* was above 1000 *l. per Ann.* and that the Appellant had, since the said *Luke's* Death, recovered 317 *l. per Ann.* thereout as her Dower: Whereas, on the other hand, the Appellant examined only one Witness, and that only to prove the Execution of the Articles of the 7th of *March* 1714. — And she further proved the said Statute Staple *viva voce* at the Hearing.

2 Dec. 1738.  
Order on Hearing.

The Cause came on to be Heard before the then Lord Chancellor of *Ireland*, who decreed, That the Plaintiff *Robert Reed* is intitled to, and should have and recover against the Defendants, as a Protestant Discoverer upon the Popery Acts, the Benefit of the said Articles of the 15th of *March* 1714. and Statute Staple.

16 and 17 May  
1739. Order on Rehearing.

Upon the Appellant's Petition, the said Cause was reheard before the said Chancellor, assisted by the Right Honourable the Lord Chief Justice *Rogerson*, and the Lord Chief Baron, when the Court took Time to consider thereof; and on the 30th of the same *May* his Lordship, assisted as before, affirmed the said former Decree.

From which Decree and Order, on rehearing affirming, the same, the Appellant hath thought fit to appeal to your Lordships: But the Respondent *Reed* humbly hopes the same shall be affirmed, amongst many others, for the following

## R E A S O N S.

- I. For that the Deed of the 15th of *March* 1714. if not at Law, is at least in Equity, a Charge of the 2000 *l.* upon the real Estate of *Luke Dillon*; and did intitle the Appellant, if she had been a Protestant, to have the same carried into Execution, by Mortgage, Rent-Charge, or other real Security, upon the Lands; and as the Acts of Parliament before-mentioned disable Papists from purchasing or acquiring equitable as well as legal Estates or Interests in Lands, the Appellant is therefore rendered incapable of taking the Benefit of these Articles, and the same is given to the Protestant Discoverer.
- II. The Statute Staple is a collateral or farther Security for the 2000 *l.* covenanted to be charged on the real Estate by the said Articles; for the Defeazance not only recites the said Articles, but expressly declares, that the said *Luke Dillon* was willing and desirous to secure the Payment of the 2000 *l.* in such manner as was by the said Articles appointed, and that he had, pursuant thereto, and at the Request of *Donnellan* and the Appellant, executed the said Statute Staple; from whence it manifestly appears, that the Statute Staple was not an original Security for the 2000 *l.* distinct from, and having no Relation to the said Articles, as the Appellant by her Answer insinuates, but was the very Means and Security accepted by the Parties for securing the Performance of the said Articles, and charging the said real Estate pursuant to the Covenant therein contained.

That



**Object.** That *Luke Dillon* covenants, that he would by way of Mortgage, Rent-Charge, or otherwise, charge and incumber his real Estate with the Sum of 200 l. per Ann. to continue till the said Sum of 2000 l. should be respectively paid, without any Interest for the same, with Power, on Default of Payment, to distrain for the same; and therefore the Appellant, by virtue of the Word (*otherwise*), might take what Security she pleased for the 2000 l. and that a Statute Staple is a personal as well as a real Security, which a Papist may accept, unless taken as a collateral Security, for the Purposes prohibited by the said Acts; and that the Statute Staple in the present Case was taken by the Appellant without any View to secure the Performance of the said Articles, and consequently is not a Case within the said Acts.

**Answ.** The Observations in the foregoing Reasons falsify the Suggestion, that the Appellant took this Statute Staple without any View to secure the Performance of the Articles; and the Word [*otherwise*] is misinterpreted by the Appellant: For the Covenant is, that *Luke Dillon* would, by Mortgage, Rent-Charge, or otherwise, charge his Real Estate with the 2000 l. So that the Word [*otherwise*] imports only some other Method or Form of charging the Real Estate, than by Mortgage, or Rent Charge. But the Stipulation in the Articles is plainly for a real, and not a personal Security; and a Statute Staple will affect the Real, as well as the Personal Estate: And the Appellant was accordingly proceeding thereupon to charge the Lands.

**III.** The whole Transaction is a Scheme and Invention to elude the Force of the above-mentioned Acts; and if suffered to take place, will render them totally useless: For in all Cases of Agreements to charge Lands for the Benefit of Papists, a Statute Staple will be taken colourably, and in Appearance as a distinct and independent Security; but will, in fact, be used as a collateral one, to secure the Enjoyment of their Interests in the Land; and by degrees will become a general Evasion of those Acts, which ought most strictly to be enforced as Laws, upon which the Security of the Kingdom principally depends.

*For all which, amongst many other Reasons, the Respondent Reed humbly hopes, That the said Decree and Order, made on the Rehearing the said Cause, shall be Affirmed; and that the said Appeal therefrom shall be Dismissed with Costs.*

J. BROWNE.  
W. MURRAY.

Dame Ellis Aylmer, : : Appellant.

Robert Reed, and Others, Respondents.

The Respondent Reed's CASE.

To be Heard at the Bar of the House of  
Lords, on the Day of April  
1740.

*Wherefore I and declared that y<sup>e</sup>  
Articles of Agreement of 15<sup>th</sup> March 1734  
were performed and executed by  
Luke Dillon having given the  
Statute Staple mentioned in the  
Decree with the Appellee's Consent  
he being party to y<sup>e</sup> Appearance of  
the 8<sup>th</sup> Decr 1735 and that the  
Statute Staple ought not to be  
considered as a Collateral Security  
Therefore ordered that y<sup>e</sup> Decree  
Bide in y<sup>e</sup> Court be dismissed*